Regulatory Flexibilities in 45 CFR 46

Ivor Pritchard, Ph.D.
Senior Advisor to the Director of OHRP
Ivor.Pritchard@hhs.gov

March 21, 2012

How much flexibility do you want?

Regulatory Jurisdiction

1. HHS supported, conducted, or covered by an assurance declaration
2. “Research”
3. “Human Subject”
4. Not Exempt
5. Engaged

“Research”

- “*Research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge” (.102(d))

“Human Subject”

“*Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains

(1) Data through *intervention* or *interaction* with the individual, or

(2) *Identifiable private information*.” (.102(f))

Exempt

1. Normal educational practices in accepted settings*
2. Educational tests, survey or interview procedures, or observation of public behavior, if anonymous or if disclosure of responses poses no risk* **
3. Same procedures as (2), if the subjects are public officials, candidates for public office, or protected by ironclad statute*

Exempt (continued)

4. Existing materials, if publicly available or recorded anonymously*
5. Department approved studies of public benefit or service programs*
6. Taste and food quality evaluation and consumer acceptance studies of wholesome foods without additives or using ingredients found to be safe by FDA, EPA, or USDA*

*not involving prisoners

** no surveys, interviews, or participatory observation w/minors

Engaged in Nonexempt Human Subjects Research

- Obtaining Informed Consent
- Performing research interventions or interactions with human subjects
- Obtaining private identifiable data about subjects

Not just releasing private identifiable data

Not just performing a commercial service

Common Topics in Regulatory Flexibility

- Exempt Human Subjects Research
- Expedited Review
- Waiver/Alteration of Informed Consent and Documentation of Informed Consent
- Cooperative Review Arrangements for Multi-site Research

Managing Exempt Research

- Does the Institution use the exemption categories?
- Who decides if an activity is exempt?
- How are the exemption categories interpreted?
- What happens in exempt research?

Expedited Review -

- is applied by the Chair or IRB member(s) appointed by the Chair;
- uses the same review criteria as full board review for initial and continuing review;
- can approve or modify research activities, but not disapprove them; and,
- applies to minimal risk activities in the approved HHS/FDA list of categories .

What is “minimal risk”?

“*Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.” (.102(i))

Three alternative standards of the risks of harm or discomfort

- Routine Physical Examinations or Tests
- Routine Psychological Examinations or Tests
- Daily Life

Expedited Review Category Research:

- Collection of [small] samples and biological specimens collected by noninvasive means
- Data involving existing or future materials collected solely for nonresearch purposes
- Data from voice, video digital or image recordings made for research purposes
- Research on individual or group characteristics or behavior
- Research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies

Waiver/Alteration of Conditions of Informed Consent (or Parental Permission/Assent)

- No more than minimal risk;
- Rights and welfare of subjects not adversely affected;
- The research could not practicably be carried out otherwise; and,
- Subjects will be provided with additional pertinent information as appropriate.(.116(d))

Waiver of Parental Permission is also allowed if (Subpart D):

- Parental permission is not a reasonable requirement to protect the subjects in the research (e.g., research on child abuse or neglect);
- an appropriate mechanism is substituted; and,
- the waiver is consistent with Federal, State, and local law. (.408(c))

Documentation of Informed Consent may be waived if:

- The only record linking the subject and the research is the consent document, and the principal risk would be potential harm resulting from a breach of confidentiality; or,
- The research is no more than minimal risk and involves no procedures for which written consent is normally required outside of the research context. (.117(c))

Not So Common Topics in Regulatory Flexibility:
1. What is "reasonable"?

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result.

Section .111(a)(2)

Not So Common Topics in Regulatory Flexibility:
2. What is a “minor change”?

An IRB may use the expedited review procedure to review either or both of the following:

(1) …..

(2) minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Section .110(b)(2)

Not So Common Topics in Regulatory Flexibility:
3. What does the IRB application say?

How is the research activity described, and at what level of detail?